

January 31, 2002

Tina Frostad
37270 SE Dubarko Drive
Sandy, Oregon 97055

Dear Ms. Frostad:

This letter is in response to your correspondence dated January 14, 2002 concerning possible conflicts of interest related to the permit application for a new retail store in the City of Sandy.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 02S-004**

STATED FACTS: A large retail outlet has submitted a permit application to construct a new store in the City of Sandy. The city planning commission denied the application and it was appealed to the city council.

Two neighborhood associations, one representing 40 households and the other representing 94 households, oppose the application for the new store. A city councilor is a member of one of the associations but is not an active participant. The city councilor's spouse is the secretary of the smaller association. Because the association's bylaws preclude it from signing contracts or incurring debt, the city councilor's spouse signed a contract for the services of an attorney to represent the association. The city councilor's spouse is the client of record and is responsible for the attorney's fees. The obligation to pay the attorney's fees will remain whether or not the permit is approved.

RELEVANT FACTS: The following Oregon Revised Statutes are applicable to the issues addressed herein:

244.020(1) " Actual conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (7) of this section.

244.020(7) " Potential conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

244.020(15) Public official means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services.

244.020(16) " Relative means the spouse of the public official, any children of the public official or of the public official's spouse, and brothers, sisters or parents of the public official or of the public official's spouse.

QUESTION: Would the city councilor have a potential conflict of interest or an actual conflict of interest when taking official action on the permit application?

OPINION: Oregon Government Standards and Practices laws define actual conflict of interest [ORS 244.020(1)] and potential conflict of interest [ORS 244.020(7)]. The difference between an actual conflict of interest and a potential conflict of interest is determined by the words would and could. An actual conflict of interest occurs when the action is reasonably certain to result in a **financial** benefit or detriment. It will occur when an action taken by the official would directly and specifically affect the financial interest of the official, the official's relative or a business with which the official or a relative of the official is associated. A potential conflict of interest exists when an official takes action that could possibly have a financial impact on that official, a relative of that official or a business with which the official or the relative of that official is associated. Such impact is not certain.

The stated facts indicate that the city councilor's spouse signed a contract with an attorney to represent the neighborhood association because the association is precluded by its by-laws from signing contracts. The city councilor's spouse is the client of record and is responsible for all of the attorney's fees. The city councilor's spouse would be responsible for the attorney's fees regardless of whether the city council approves or rejects the application. Accordingly, it appears that neither the city councilor or the councilor's spouse would be financially impacted by the councilor taking official action and no conflict of interest would arise.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TO THE FACTS STATED HEREIN. ANY RELEVANT INFORMATION, WHICH WAS NOT INCLUDED BY THE REQUESTER OF THIS OPINION IN THE STATED FACTS,

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COULD COMPLETELY CHANGE THE OUTCOME OF THIS OPINION. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. THIS OPINION DOES NOT EXEMPT A PUBLIC OFFICIAL FROM LIABILITY UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS ONLY MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.

Please contact this office again if you would like this opinion submitted to the Government Standards and Practices Commission for adoption as a formal advisory opinion pursuant to ORS 244.280.

Sincerely,

L. Patrick Hearn
Executive Director

02S-0040JP